



October 13, 2015

By Email: <email address removed>

Chief William C. Seymour and Councillors  
Cowichan Tribes  
5760 Allenby Road  
Duncan BC V9L 5J1

**Re: Roberts Bank Terminal 2 Project – Response to Comments on Environmental Impact Statement Completeness**

Dear Chief Seymour and Councillors:

Thank you for your letter of June 15, 2015 on behalf of the Cowichan Tribes regarding the proposed Roberts Bank Terminal 2 Project (the Project). In your letter, you provided comments on the completeness of the Environmental Impact Statement (EIS)

In reviewing Cowichan Tribes input, the Canadian Environmental Assessment Agency (the Agency) notes that the input fits into one of three categories as follows:

1. Comments on the “Completeness” of the EIS;
2. Comments on the “Sufficiency” of the EIS; and
3. Information not set out in the EIS Guidelines.

The attached table indicates how each of your comments was considered in preparing the identified information requirements to Port Metro Vancouver (PMV).

I would like to point out that numerous comments were received from Aboriginal groups and the public that relate to the sufficiency of the information (i.e. the technical merit of the information) provided by PMV, rather than whether or not information is required in the EIS Guidelines. While some of this information provides the Agency, PMV and other participants in the process with early notification of issues that may be relevant at later stages of the environmental assessment, it is not information that the Agency requested of PMV at this time.

Once the Review Panel has been appointed, it will conduct a sufficiency review in accordance with paragraphs 4.15 through 4.22 of the Review Panel Terms of Reference. Those comments that you have identified relating to the sufficiency of the information in the EIS will be considered by the Review Panel in conducting its review. While the sufficiency review will include a public comment period of not less than 60 days, your comments are already on the public registry and do not need to be

resubmitted. The Panel will consider these comments and determine any additional technical information and analysis that is required for the Panel to complete its assessment of the Project. Further information on the difference between the Agency's completeness review and Review Panel's sufficiency review can be found on the Registry at: <http://www.ceaa-acee.gc.ca/050/document-eng.cfm?document=101574>.

The Agency received confirmation from PMV that the Marine Shipping Addendum is not expected to be submitted until late October 2015. Once this information is received the Agency will hold a public comment period on the completeness of the Addendum.

Feel free to contact me if you have any further questions or would like to set up a meeting to discuss next steps for the process for reviewing the Project and/or the consultation process for the Project.

Yours sincerely,

<Original signed by>

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## Robert Banks Terminal 2 Project

### Consideration of Cowichan Tribes and Stz'uminus First Nation Comments on the Completeness of the Environmental Impact Statement

Thank you for your comments on the completeness of the Environmental Impact Statement. The Canadian Environmental Assessment Agency (Agency) has requested that additional information be provided by the proponent; the additional information requirements are available here: <http://www.ceaa-acee.gc.ca/050/documents/p80054/102083E.pdf>. In the responses to your comments on the completeness of the Environmental Impact Statement, the additional information requirement number is provided, when applicable, for ease of reference, and a rationale is provided if the information request was not carried forward to the Proponent.

Topic / Issue	Reference to EIS Guidelines or EIS	Information Request (proposed by Cowichan Tribes and Stz'uminus First Nation)	Rationale (proposed by Cowichan Tribes and Stz'uminus First Nation)	Rationale for requesting (or not) information
VOLUME 1: INTRODUCTION AND PROJECT INFORMATION				
Section 7.0 Engagement and Consultation				
			There has been inadequate aboriginal involvement in the technical component of EIS preparation. During previous environmental reviews, including the Port Metro Vancouver Deltaport 3 project, First Nations were funded to participate in Technical Working Group meetings and processes. The inadequate inclusion of aboriginal interests for the T2 proposal, including the selection by Port Metro Vancouver of only a subset of affected First Nations to participate in the Technical Advisory Groups (TAGs) has undermined the EIS process. This exclusion has important ramifications for the Scoping process, including the identification of Valued Components and establishment of baseline conditions, which took place at the outset of EIS preparation with little aboriginal involvement.	This is a comment about the involvement of First Nations in Port Metro Vancouver's TAGs and preparation of the EIS. This is not a completeness issue. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.
Inadequate aboriginal participation in EIS preparation	<i>p. 7-46 Section 7.4</i>	"As described further in Section 7.4, the TAG process focussed on four key areas identified by Port Metro Vancouver: 1) Coastal Geomorphology, 2) Productive Capacity, 3) Biofilm and Shorebirds, and 4) Southern resident Killer Whales" Please provide the rationale as to how the four key areas represent the breadth of aboriginal interests on Roberts Bank.	There are other priority concerns in addition to the 4 which are listed, e.g. Dungeness crabs and migratory fish.	There is no requirement in the EIS Guidelines to focus TAG's work on specific topics. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.

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Inadequate aboriginal participation in EIS preparation	p. 7-46 Section 7.4	Each TAG consisted of leading technical experts from within regulatory agencies, academia and NGOs. Select aboriginal groups were also invited to attend the TAG sessions; however, they declined to participate.” Please provide the basis upon which aboriginal groups were selected. Please provide rationale for excluding Cowichan Nation Alliance participation in the TAG process.	Roberts Bank forms part of the shared Traditional Territory of 14 First Nations. An inclusive process is required to ensure that all aboriginal interests are considered.	This is a comment about the involvement of First Nations in Port Metro Vancouver’s TAGs and preparation of the EIS. This is not a completeness issue. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.
Selection of Valued Components does not address Aboriginal rights	Appendix 7.2-B, ID#177	#177 identifies a “concern with how cumulative effects are assessed and applied to impacts to rights”, but the EIS fails to address this issue. Why was cumulative effects on the ability of First Nations to exercise Aboriginal rights not identified as a VC?	Adequate consultation requires a consideration of how the cumulative effects of multiple projects may impact First Nations’ future ability to exercise Aboriginal rights.	This item was not required by the EIS Guidelines. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review. Aboriginal groups are encouraged to describe to the Panel how past projects and the proposed project have/will potentially cumulatively impact First Nation’s future ability to exercise asserted or established Aboriginal or Treaty rights.  The Agency has requested additional information on cumulative effects in its letter of July 31, 2015 to Port Metro Vancouver (page 8, #13). This information should inform the cumulative environmental effects of the proposed project and may assist in understanding potential cumulative impacts on First Nation’s future ability to exercise asserted or established Aboriginal or Treaty rights.
<b>VOLUME 2: EFFECTS ASSESSMENT METHODS AND PHYSICAL SETTING</b>				
<b>Section 8.0 Effects Assessment Methods</b>				
Inadequate aboriginal participation in EIS preparation		“The issues scoping process was also supported by discussions with scientists, technical experts and representatives of regulatory agencies which participated in the projects Technical Advisory Group (TAG) process.” Please provide rationale for excluding Cowichan	Scoping is arguably the most important part of EIS preparation and aboriginal interests must be considered, particular during the selection of Valued Components and defining baseline conditions	The Agency has requested additional information on Aboriginal Traditional Knowledge in its letter of July 31, 2015 to Port Metro Vancouver (page 3, #8). Within that information request the following was requested:

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		Nation Alliance participation in the TAG process.		"Provide a description of where and how Aboriginal traditional knowledge has been used to support the selection of valued components, baseline descriptions, the assessment of effects including the identification of mitigation measures, and in the determination of significance of adverse environmental effects. If Aboriginal traditional knowledge was not used, provide a rationale for why that information was not considered."
Inadequate aboriginal participation in EIS preparation	Section 8.1.2	Selection of Valued Components (VCs) addressed the question: "Is the candidate VC of interest to the public, aboriginal groups or governments?" Please provide the process whereby it was determined that a VC was of interest to aboriginal groups? Which VCs were identified by aboriginal groups?	Selection of VCs establishes some of the key parameters for the scope of the EIS.	The Agency has requested additional information on Aboriginal Traditional Knowledge in its letter of July 31, 2015 to Port Metro Vancouver (page 3, IR #8). See additional detail above.  The Agency did not request additional information regarding VC selection since there is already some information provided in the EIS. The Panel will determine whether it requires additional information or clarification with respect to VC selection to inform its sufficiency review.
Inadequate aboriginal participation in EIS preparation	p. 8-5	"Screening Candidate VCs - A comprehensive list of candidate VCs was compiled based on the following.....Community Knowledge and ATK" Please provide the list of specific VCs that were based on Community Knowledge and ATK	Need to identify and include VCs based upon aboriginal input	Please see item above.
Inadequate aboriginal participation in EIS preparation	Figure 8-1	Candidate VCs of interest to aboriginal groups were excluded if the following two additional questions were not answered affirmatively: "Does the candidate VC occur near or within the Project Area?" and "Could the Project interact with the candidate VC?" Please identify how Community Knowledge and ATK was incorporated to answer these two additional questions.	ATK must be incorporated throughout the environmental assessment process.	The Agency has requested additional information on Aboriginal Traditional Knowledge in its letter of July 31, 2015 to Port Metro Vancouver (page 3, #8).
Understanding "Significance"	Section	"Determination of Significance of Residual	Need to understand what are the thresholds as	The Agency did not request additional

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	8.1.9.6	Adverse Cumulative Effects. To determine significance, the predicted future condition of the VC.....was compared to the threshold of significance defined for that VC." Please provide the threshold criteria which were adopted.	they dictate the classification of "significance"	information for this item since there is already some information provided in the EIS. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.
<b>VOLUME 3: BIOPHYSICAL EFFECTS ASSESSMENTS</b>				
<b>Section 10.0 Biophysical Setting</b>				
Inadequate aboriginal participation in EIS preparation	Section 10.3.1 p. 10 - 9	"Technical Advisory Group members, with expertise on marine mammals, birds, fish, invertebrates and marine vegetation that utilize the Roberts Bank area, reviewed key issues....." How were First Nations involved in the technical review of key issues?	Aboriginal input required for this process.	The Agency has requested additional information on Aboriginal Traditional Knowledge in its letter of July 31, 2015 to Port Metro Vancouver (page 3, #8).
Predation on rockfish	p. 10-14	"Identified rockfish predators include dolphins and porpoises, pinnipeds, SRKW, bald eagles, gulls and terns, juvenile and adult salmon, dogfish, large demersal fish, lingcod, rockfish, skate and starry flounder." Please provide a more accurate list. Why were human withdrawals (i.e. fishing) excluded?	Improved accuracy	The Agency did not request additional information for this item since there is already some information provided in the EIS in Section 16: Ongoing productivity of Commercial, Recreational and Aboriginal Fisheries Effects Assessment. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.
<b>Section 12.0 Marine Invertebrates Effects Assessment</b>				
Use of ATK	p. 12-4	"Aboriginal Traditional Knowledge pertaining to marine invertebrates which Port Metro Vancouver had access to or acquired through engagement activities, was utilized in sub-component selection and was also taken into account in the assessment of potential effects of the project on marine invertebrates." Please provide specific information which explains how ATK was utilized in subcomponent selection	There was no aboriginal involvement in the TAG process.	The Agency has requested additional information on Aboriginal Traditional Knowledge its letter of July 31, 2015 to Port Metro Vancouver (page 3, #8).
Baseline	Section 12.3.2 p. 12-7	The characterization of existing conditions is reflective of the year 2013, when marine invertebrate studies were completed in the LAA. The selection of 2013 as a baseline is arbitrary. How would the EIS conclusions change with an	First Nations have a long term perspective on environmental management and this view needs to be reflected in the EIS.	The Agency has requested additional information on this item in its letter of July 31, 2015 to Port Metro Vancouver (page 7, #13).

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		earlier baseline?		
Section 13.0 Marine Fish Effects Assessment				
Inadequate aboriginal participation in EIS preparation	p. 13-4	<p>“Marine fish species of particular interest were identified through discussions with regulators and Aboriginal Groups; input from scientific experts during the Technical Advisory Group (TAG) and Technical Working Group workshops;.....”</p> <p>What technical gaps exist within this process due to inadequate aboriginal participation?</p>	First Nations participated in the Technical Working Group process during the Deltaport 3 evaluation and deserve a place at the Technical Tables for 2.	<p>The Agency has requested additional information on Aboriginal Traditional Knowledge in its letter of July 31, 2015 to Port Metro Vancouver (page 3, #8).</p> <p>Technical gaps that may exist are directly related to a sufficiency review that will be conducted by the Panel once appointed.</p>
VOLUME 5: ENVIRONMENTAL MANAGEMENT, ABORIGINAL RIGHTS AND INTERESTS, CONCLUSIONS AND SUMMARIES				
Section 32.0 Potential or Established Aboriginal and Treaty Rights and Related Interests, Including Current Use of Lands and Resources for Traditional Purposes				
Selection of Valued Components does not address Aboriginal rights	Executive Summary, pp. 42-43	<p>The EIS identifies “Outdoor Recreation” and “Labour Market” as “Valued Components”, saying “Valued components are the focus of the environmental assessment for the purposes of evaluating Project-related effects”. But the EIS classifies “Potential or Established Aboriginal and Treaty Rights and Related Interests, Including Current Use of Lands and Resources for Traditional Purposes” as an “Other effects assessment” undertaken “in addition to the assessment of intermediate and valued components”.</p> <p>Explain the rationale for this distinction: Why is the Protection of Aboriginal Rights not a Valued Component?</p>	Protection of aboriginal rights should be emphasized as a Valued Component, not shifted to a side-note	This appears to be an item better addressed to Port Metro Vancouver given that they have determined how to determine and characterize valued components. The Agency did not request additional information for this item since there is already some information provided in the EIS. The Panel will determine whether it requires additional information or clarification with respect to this information to inform its sufficiency review.